IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3114 OF 2003

In

SUIT NO.1084 OF 1993

Pratap Premjibhai Gohil & Ors. : Plaintiffs

V/s.

Ranjit Premjibhai Gohil & Ors. : Defendants

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Mr.M.S.Shah i/b. Jayesh Patel for defendant no.8 in support.

Mr.A.Y.Sakhare with Mr.A.R.Patil i/b. Mahesh Jani for the plaintiffs to show cause.

Mr.Sharan Jagtiani i/b.Divya Shah Associates for defendant no.3 to show cause.

Mr.R.S.Deshpande for defendant nos.4 & 9 to show cause.

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CORAM : S.J.VAZIFDAR, J.

December 8, 2005.

P.C.

1. This Notice of Motion has been taken out by defendant no.8 for the following reliefs:-

(a) That Defendant No.8 Purnima Ranjit Gohil be permitted to manage the affairs of

properties known as Kanukunj and Gohil House and situated at Lady Jamshedji Road, Mahim, Mumbai--400 016 and to collect Rent and/or other receivables from all tenants/occupants of said properties and pay outgoings for the same and generally to do or perform all other acts, deeds and things in place and stead of Late Shri Ranjit P. Gohil.

(b) That Defendant No.8 Purnima Ranjit Gohil be permitted to continue negotiations with Bank of India regarding renewal of Lease for the premises in their possession in Gohil House and to execute the Lease if thought fit or take appropriate action against Bank if negotiations fail and generally to do or perform all other acts, deeds and things in place and stead of Late Shri Ranjit P. Gohil."

2. The suit is filed for the administration of the estate of one Premjibhai Thabhanbhai Gohil. Plaintiff nos.1 and 4 and original defendant no.1 were the sons of Premjibhai and original defendant no.2 Mrs.Prasankunver

Gohil who expired on 11.6.1994. Defendant no.1 expired on 25.2.2003. Defendant nos.4 and 5 are the daughters of the deceased. Defendant no.8 is the widow of original defendant no.1. At present, I am concerned only with the property referred to in the prayer clauses referred to above. In view of certain orders to which I will make a reference, it is not necessary to deal with the rival contentions of the parties. Prayer clause (a) of the Notice of Motion has already been granted by an order of J.N.Patel, J. dated 28.7.2004. Defendant no.8 is the widow of defendant no.1. It was nobody's case that there was any dispute between the plaintiffs and defendant no.8 and that their interests were the same. Assuming that the order dated 28.7.2004 was an ad-interim order, this Notice of Motion is disposed of as far as prayer clause (a) is concerned in terms of the order dated 28.7.2004. There is serious objection in this regard.

3. This leaves for consideration prayer clause (b) of the Notice of Motion.

4. By an order dated 8.4.1993 in Notice of Motion no.772 of 1993, the defendants were restrained from disposing of or creating any third-party rights, inter alia, in respect of the suit property to the extent of the undivided half-share of the deceased therein with the

structures standing thereon. The defendants were also directed to disclose on affidavit the names of the tenants in occupation of the properties. The defendants were allowed to deal with the tenancies as they liked. The lease with the Bank was permitted to be renewed. However, as and when the lease was renewed, the same was immediately to be conveyed. The Notice of Motion was finally disposed of by an order dated 14.7.1993, clauses 1 to 4 whereof read as under:-

> "1. Ad-interim order dated 8th April 1998 confirmed subject to following modifications.
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> 2. The Defendant Nos.1 and 2 shall collect rents from the tenants and pay the outgoings.
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> 3. The Defendant Nos.1 and 2 shall not transfer any tenancies without obtaining leave of this Hon’ble Court.
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> 4. The Defendant No.2, without prejudice to her rights and contentions shall not transfer alienate, encumber or part with possession of undivided half share in Plot

No.11 claimed by her."

5. By an order dated 4.10.1999 in Notice of Motion no.3269 of 2003, A.P.Shah, J. (as His Lordship then was) declined to change the arrangement as contained in the order dated 14.7.1993 and permitted defendant no.1 to collect the rent from the Bank. It was further left to defendant no.1 to negotiate for renewal of the agreement of lease. The renewal, however, was not to be granted without leave of the Court.

6. It was, in these circumstances, that the present Notice of Motion was taken out. As stated above, prayer clause (a) of this Notice of Motion was allowed.

7. Original defendant no.1 thereafter carried on extensive negotiations with the Bank and finally an agreement was arrived at with the Bank regarding the renewal of the lease agreement with the Bank. There is no serious dispute about the genuineness of the transaction. This is understandably so. The essential terms do not indicate that there is any under-valuation. It is necessary to keep in mind that upto the date of the execution of the lease, it may not be possible for the parties to recover any substantial amount towards arrears from 1.4.1999. This itself works out to about

Rs.2,40,00,000/-. This is at the rate of Rs.60/- per sq. ft. for the period 1.4.1999 to 31.3.2004 and at the rate of Rs.100/- per sq. ft. from 1.4.2004 to 30.11.2005 as lease rent. Even if an agreement came to be executed with any third-party, this amount would not be payable by such third party. This would leave the parties to litigate with the Bank for whatever arrears they may be entitled to. Admittedly, no proceedings have been adopted against the Bank in respect thereof till date.

8. The future lease rental is fixed at Rs.4,28,000/- per month. Thus, even assuming that the plaintiff's contention that the property is likely to fetch a lease rent of Rs.4,81,000/- per month, I am inclined to permit the execution of the lease at the rate of Rs.4,28,000/- per month.

9. Mr.Sakhare, learned counsel appearing on behalf of the plaintiffs and Mr.Jagtiani, leaned counsel appearing on behalf of defendant no.3 who supported him, contended that defendant no.8 ought not to be permitted to withdraw the lease rentals, including the arrears that the Bank will be paying upon the execution of the agreement. It was then submitted that when the aforesaid orders were passed, the lease rental being recovered from the Bank was only about Rs.2,500/-. That situation has changed

appreciably. That the situation has changed monetarily is obvious. However, I am bound by the aforesaid orders which permit defendant no.1 and now defendant no.8 to collect the rents from the tenants and pay the outgoings. There is no application taken out to restrain defendant no.8 from doing so. Nor is there an application for modification of the order dated 14.7.1993. It is not necessary, therefore, for me to deal with this question now in the present Notice of Motion. It is for the plaintiff and defendant no.3 to adopt appropriate proceedings in respect thereof.

10. In the circumstances, the Notice of Motion is made absolute in terms of prayer clause (a). Defendant no.8 is permitted to execute a lease with Bank of India on the terms and conditions contained in the draft deed tendered in Court and marked ‘X’. The Bank shall, however, not pay the amount under the lease agreement to defendant no.8 for a period of six weeks from the date of service of a copy of the executed lease deed is forwarded to the Advocate of the plaintiffs and defendant nos.3, 4 and 9.

11. All costs, charges and expenses payable in respect of the execution of the lease deed, including stamp and registration charges by the lessors shall be paid by the Bank and adjusted from the lease rentals.

S.J. VAZIFDAR, J.